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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,748	12/05/2001	Lawrence A. Gordon	81688	2561
23685	7590	02/11/2004		
KRIEGSMAN & KRIEGSMAN 665 FRANKLIN STREET FRAMINGHAM, MA 01702			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3727	PAPER NUMBER 12
DATE MAILED: 02/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/006,748

Applicant(s)

GORDON, LAWRENCE A.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 10-19 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-19 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3727

The foamed polymer body and the flexible, un-foamed polymer bag that is integrally bonded to the polymer body have a final, installed configuration best represented by applicant's Fig. 4, the combination of the body and bag is called an insert. In this final, installed configuration, the polymer bag is double backed upon itself and the bag has an open end (at the top of Fig. 4), a closed end (at the bottom of Fig. 4) and a generally uniform width over its entire length from said open end to said closed end. The width is represented by an outer wall of the insert, the inside of which, is bonded to the body and the outside of the outer wall represents an outer side wall surface of the insert. The bag also has an inside wall which is bonded to the body on an outside surface of the inside wall and which forms a side wall of an inner cavity on its inside surface.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 15-18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lantz ('017).

Claims 15-18 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lantz ('764).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3727

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10-14, 19 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan in view of Lantz ('017) or Lantz ('764).

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body. Either Lantz reference teaches integrally bonding a bag to a foamed polymer body. When the Lantz bag is in the final, installed configuration shown in Fig. 1-6 (covering the outer surface of the side wall, the upper edge, the inner surface of the side wall and the inner bottom of the body), the bag is integrally bonded to the body and the bag has a generally uniform width over its entire length from said open end (at the top of Fig. 1 and 2) to said closed end (at the bottom of Fig. 1 and 2). Even though the Lantz bag before being installed on the body and when laid flat (as shown in Fig. 11a and 12) was tapered, in the final, installed configuration it is closely adhered to the outer side wall surface of the body such that it has a uniform width. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention.

For claim 13, polyethylene and hexene bag materials would have been obvious by design choice.

For claim 14, it would have been obvious to replace the flaps on the inner box with a closure member which fits by plugging the open top end and being removably disposed within the open top end.

For claims 24 and 25, the step of providing an elongated plastic bag having a uniform width is met when considering the final, installed configuration of the bag. The height or length of the bag in this installed configuration is greater than the bag's width and depth.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Claims 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lantz ('017) or Lantz ('764) in view of Grogan.

Either Lantz discloses the invention except for inner box. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan in view of Lantz ('017) or Lantz ('764) and Langen.

This rejection is made should it be deemed that the Lantz references does not sufficiently teach the uniform width of the bag over its entire length from its open end to its closed end.

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body and the uniform width of the bag. Either Lantz teaches integrally bonding a bag to a foamed polymer body. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention. Langen teaches a bag having uniform width over its entire length from the open

end to the closed end as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lantz ('017) or Lantz ('764) in view of Grogan and Langen.

This rejection is made should it be deemed that the Lantz references do not sufficiently disclose the uniform width of the bag.

Either Lantz discloses the invention except for inner box and the uniform width of the bag. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container. Langen teaches a bag having uniform width over its entire length from open end to closed end as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.

Applicant's arguments filed December 8, 2003 have been fully considered but they are not persuasive.

Art Unit: 3727

Applicant states that the width of the bags disclosed by Lantz ('017) and Lantz ('764) changes dramatically over its length. When considering the bag's final, installed configuration, the width is considered to be generally uniform over the entire length of the bag from the open end to the closed end.

Applicant states that Lantz discloses the tapering of a bag as a significant advance in eliminating folds and fissures caused by surrounding a foam body with a plastic sheet. This substantiates obviousness because the elimination of said "tapering" and its function and effect of eliminating folds and fissures would be obvious if the elimination of the folds and fissures is not needed or desired. Lantz solves the problem of how to fit the bag to the foamed body so that the folds and fissures are reduced. In a situation where the folds and fissures are not deemed to present a detriment, it seems obvious that one of ordinary skill in the art would consider ways to reduce the cost of producing each component, including the bag. A bag having uniform width has a significant cost savings over a tapered bag since most plastic bags are made by a blown, extrusion method. The blown, extrusion method begins when a continuous, uniform width extruded tube of plastic is expanded with air immediately after passing through a forming die. The tube is collapsed and folded and trimmed to make open ends and heat sealed to make closed ends. The side edges are folded and no other forming needs to occur to provide the uniform width. Additional steps must occur when a tapered bag is made. The side edges are heat sealed and then waste is trimmed at each side. The waste is usually collected and reused.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under

Art Unit: 3727

37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.



Art Unit: 3727

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc